it is submitted that, apart from special facts, effect may properly be given to a transaction which, without materially impairing the state's assurance for the prisoner's appearance, lightens the burden of the criminal bail.[19]

RECENT CASES.

AGENCY — PRINCIPAL'S LIABILITY TO THIRD PERSONS IN TORT — LIABILITY OF MEMBERSHIP CORPORATION FOR FRAUDULENT ISSUES OF STOCK CERTIFICATES. — The defendant was a membership corporation empowered to issue certificates of indebtedness in the form of stock certificates and whose shares were transferable only on the books of the company upon surrender of the certificate representing them. The treasurer of the company fraudulently issued to himself spurious certificates, constituting an over-issue and with no corresponding shares on the books. The plaintiff loaned money on these spurious certificates and sued the defendant for the damages occasioned thereby. *Held*, that the defendant is not liable. *American, etc., Bank* v. *Woodlawn Cemetery*, 87 N. E. 107 (N. Y., Ct. App.). See NOTES, p. 526.

AGENCY — UNDISCLOSED PRINCIPAL — ELECTION TO SUE EITHER AGENT OR PRINCIPAL. — The plaintiff contracted with the agent of an undisclosed principal. After disclosure he sued the principal to judgment; but not obtaining satisfaction, he then sued the agent. *Held*, that suing the principal to judgment constitutes a conclusive election which discharges the agent. *Murphy* v. *Hutchinson*, 48 So. 178 (Miss.).

One who contracts with the agent of an undisclosed principal may sue either the agent or the principal. *Paterson* v. *Gandasequi*, 15 East 62. Nothing short of suing to judgment seems to constitute an election. *Cobb* v. *Knapp*, 71 N. Y. 348. See *Curtis* v. *Williamson*, L. R. 10 Q. B. 57. And it has even been held that satisfaction of a judgment against one is necessary to discharge the other. *Beymer* v. *Bonsall*, 79 Pa. St. 298. *Contra, Priestly* v. *Fernie*, 3 H. & C. 977. It has been suggested that there is no doctrine of election, but that the cause of action becomes merged in judgment secured against either. See 14 HARV. L. REV. 68. *Cf. Jansen* v. *Grimshaw*, 125 Ill. 468. But if the principal remains undisclosed when judgment is entered against the agent, the principal is not discharged. *Greenburg* v. *Palmieri*, 71 N. J. L. 83; *Remmel* v. *Townsend*, 31 N. Y. Supp. 985. This result, though inconsistent with the theory of merger, is desirable; for the same considerations of fairness that gave rise to this right to elect sustain its continuance until it has been consciously exercised, or satisfaction received. The doctrine of election thus seems to be the more satisfactory doctrine. The rule that only a judgment secured with knowledge of all the facts constitutes an election is often applied in analogous cases where one has an election of remedies. See *Moore* v. *Sanford*, 151 Mass. 285; *Garrett* v. *Farewell*, 199 Ill. 436.

ALIENS — NECESSITY OF RESIDENCE FOR NATURALIZATION BY MARRIAGE. — A resident alien sought naturalization papers. At the time of his application, his wife, who had never been a resident in this country, was detained by the immigration authorities because of a contagious disease. The petition for naturalization was opposed on the ground that by virtue of the act providing that "Any woman who is now, or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen" (U. S. Comp. St. (1901), p. 1268, § 1994), the naturalization of the husband would secure the admission of his wife. *Held*, that as the act of Congress is not to be construed as applying to non-resident aliens, the natu-

[19] *Cf.* Belond *v.* Guy, 20 Wash. 160.